Plaintiffs Norbert, Regina, Elaine, and Lorraine Roch ("Rochs") appeal from multiple orders entered by the district court granting summary judgment to all Defendants and dismissing in its entirety this civil rights action brought pursuant to 42 U.S.C. § 1983. Because we agree with the district court's conclusion that the Rochs' claims are entirely without merit, we **AFFIRM** the grant of summary judgment in favor of Defendants.

I BACKGROUND

In May 2001, Tennessee and federal authorities learned that the Rochs were keeping a large number of domestic and exotic animals in inhumane conditions on their property, including, but not limited to, livestock, an unknown number of monkeys, a raccoon, a fox squirrel, two grackles, two starlings, a robin, a cardinal, and more than 175 dogs. The state filed criminal charges against the Rochs, alleging more than 250 violations of Tennessee law including animal cruelty, theft of property, disorderly conduct, resisting arrest, and illegal possession of native wildlife. Lorraine Roch pleaded guilty to the latter charge, and received a suspended sentence of 11 months and 29 days imprisonment, plus a $250 fine. Additionally, each of the Rochs entered into a "Memorandum of Understanding" pursuant to Tennessee Code Ann. § 40-15-105, agreeing to pay a $5,000 fine and court costs on one criminal warrant, and additionally promising "not to obtain any more animals in the State of Tennessee" and to "forfeit any interest they may have in all animals previously seized by the Bedford County Humane Society."

While the criminal charges against the Rochs were still pending, the State of Tennessee and the Shelbyville-Bedford County Humane Association ("SBCHA") filed a joint civil petition for relief against the Rochs, requesting a state court hearing to establish a plan of care for animals on the Roch property. The court issued an *ex parte* order granting the SBCHA the authority to "enter the Roch premises and to inspect the condition of the animals impounded there and to take any action reasonably necessary to interfere [and] to prevent the perpetration of any act of cruelty on any animal." Several days later, SBCHA volunteers, accompanied by members of the Bedford County Sheriff's Department, entered the Rochs' property and began to remove animals. By the following month, over 100 dogs had been removed from the Rochs' farm and were either placed with adoptive families or kept at the SBCHA's shelter.

On July 26, 2001, a hearing was then held in state court to determine the fate of 51 dogs that remained in the Rochs' possession. Dr. Elizabeth Shull, a veterinarian who visited the Rochs' property testified that due to the deplorable conditions in which the dogs had been housed, it was unlikely that the animals could be rehabilitated; consequently, Dr. Shull recommended that the animals be euthanized. Other witnesses testified about the inhumane conditions on the premises, as well as the dangers to human health presented by the large amount of fecal waste and deceased animal carcasses littering the Rochs' property. The Rochs were represented by counsel during the entire state court proceedings, and their counsel had an opportunity to cross-examine all of the state's and the SBCHA's witnesses at the July 26 hearing. Following the hearing, the parties entered into an agreement by which

the Rochs would be allowed to keep the remaining dogs, subject to their promise to properly care for the animals.

By mid-September 2001, the parties were back in court, and the state and the SBCHA presented evidence that the Rochs had made little or no effort to provide proper care for the remaining dogs. The state court issued a written opinion and order on September 28, 2001, concluding that the Rochs had perpetuated acts of cruelty on the dogs on their premises, and granting the SBCHA the authority to remove and dispose of all dogs still on the Rochs' farm. The court issued a subsequent order setting a time for the SBCHA to take possession of the remaining dogs. The Rochs appealed this order to the Court of Appeals of Tennessee, which denied the appeal. On October 20, SBCHA volunteers euthanized the 51 remaining dogs. Additionally, upon noting the deplorable and dangerously unhealthy condition of the Rochs' livestock, the SBCHA also removed approximately 39 goats, sheep, donkeys, and cattle.

On May 3, 2002, the Rochs filed the instant lawsuit pursuant to 42 U.S.C. § 1983, alleging that the SBCHA's seizure of animals from their property constituted an unreasonable seizure in violation of the Fourth Amendment, a governmental taking without just compensation in violation of the Fifth Amendment, and trespass and conversion under state tort law. The Rochs also included a cause of action for intentional infliction of emotional distress under Tennessee law. Defendants moved for summary judgment, and the district court issued three separate opinions disposing of the Rochs' claims. In its first opinion, the court determined that all of the Rochs' claims, insofar as they related to the 51 dogs seized on October 20, 2001, were barred by *res judicata*, because the

Rochs had a full and fair opportunity to litigate the seizure of dogs in the state court proceedings. The court also alternatively held that all of the Rochs' claims relating to the dogs failed on the merits, entitling Defendants to summary judgment. In its second and third opinions, the district court granted Defendants' motions for summary judgment on the merits of the Rochs' claims insofar as they related to the 39 heads of livestock seized on October 20, 2001.

II. DISCUSSION

The Rochs now appeal the district court's rulings. We review the district court's grant of summary judgment *de novo*. *Moorer v. Baptist Memorial Health Care Sys.*, 398 F.3d 469, 486 (6th Cir.2005). We have carefully considered the record on appeal, the parties' briefs and the applicable law, and we agree with the district court's determination that the Rochs' claims relating to the 39 heads of livestock are completely without merit. We also agree with the reasoning expressed in the district court's second and third opinions, and find that the issuance of a detailed opinion on the merits of the Rochs' claims regarding the 39 heads of livestock would serve no useful purpose. However, we note that the district court's conclusion that the Rochs' claims relating to the 51 dogs were barred by *res judicata* was legally incorrect. Rather than relying on *res judicata* the district court should have concluded, as we now conclude, that it was without jurisdiction to hear the Rochs' dog seizure claims under the *Rooker-Feldman* doctrine.

The *Rooker-Feldman* doctrine, named for the Supreme Court's decisions in *Rooker v. Fidelity Trust Co.*, 263 U.S.

413, 44 S.Ct. 149, 68 L.Ed. 362 (1923), and *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 103 S.Ct. 1303, 75 L.Ed.2d 206 (1983), "bars attempts by a federal plaintiff to receive appellate review of a state-court decision in federal district court." *Howard v. Whitbeck*, 382 F.3d 633, 638 (6th Cir.2004); *see also United States v. Owens*, 54 F.3d 271, 274 (6th Cir.1995) (stating that *Rooker-Feldman* "stands for the proposition that a federal district court may not hear an appeal of a case already litigated in state court. A party raising a federal question must appeal a state court decision through the state system and then directly to the Supreme Court of the United States"). Where a federal plaintiff is attempting to attack an issue that was already litigated in state court, and "'the injury alleged resulted from the state court judgment itself, *Rooker-Feldman* directs that the lower federal courts lack jurisdiction.'" *Hutcherson v. Lauderdale County*, 326 F.3d 747, 755 (6th Cir.2003) (quoting *Garry v. Geils*, 82 F.3d 1362, 1365 (7th Cir.1996)). We have previously adopted the following "rough guide" to distinguishing between *Rooker-Feldman* and *res judicata:* "if the federal plaintiff was the plaintiff in state court, apply res judicata; if the federal plaintiff was the defendant in state court, apply *Rooker-Feldman* . . . A *defendant* who has lost in state court and sues in federal court does not assert injury at the hands of his adversary; he asserts injury at the hands of the court, and the second suit therefore is an effort to obtain collateral review. It must be dismissed not on the basis of preclusion but for lack of jurisdiction [under *Rooker-Feldman*]." *Garry*, 82 F.3d at 1367 (emphasis in original) (quotations and citations omitted) (quoted in *Hutcherson*, 326 F.3d at 755).

In the instant case, the Rochs were the defendants in state court. The instant suit, insofar as it relates to the seizure of dogs, takes issue or expresses "unhappiness" with the state court's decision granting the SBCHA the authority to remove and/or euthanize dogs on their property. The district court correctly found that the issues underlying the Rochs' claims were already litigated in state court, but because the Rochs are attempting to use a federal forum to attack the state court's judgment, *Rooker-Feldman*, and not *res judicata*, applies. Thus, we are without jurisdiction to review the Rochs' claim that Defendants unlawfully removed dogs from their farm.

III. CONCLUSION

For the reasons set forth above, we **AFFIRM** the district court's judgment in its entirety.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
AT WINCHESTER

NORBERT ROCH, REGINA ROCH, ELAINE ROCH, and LORRAINE ROCH, Plaintiffs	)	
v.	)	No. 4:02-cv-30
HUMANE SOCIETY OF BEDFORD COUNTY, TENNESSEE, INC., *et al.*, Defendants	)	

MEMORANDUM OPINION

(Filed Jan. 13, 2004)

This is a civil rights action brought pursuant to 42 § 1983 and several state law theories arising out of the defendants' seizure of dogs, exotic animals, native wildlife, and livestock from plaintiffs' property. This court has twice previously issued memorandum opinions resolving pending dispositive motions. Those opinions, issued on February 5, 2003, and July 25, 2003, are incorporated by reference herein.

Currently pending is the supplemental motion for summary judgment of defendants Humane Society of Bedford County, Tennessee, Inc., Larry Wayne Robins, Sr., and John and Jane Doe [Court File #41], and plaintiffs' motion to alter or amend the court's memorandum opinion of January 25, 2003, with respect to defendant Kay Petty [Court File #44]. For the reasons that follow, defendants' motion [Court File #41] will be granted, plaintiffs' motion

[Court File #44] will be denied, and this action will be dismissed.

The undisputed findings made in the two prior opinions make it clear that all of the animals seized in this case were seized lawfully under court order and Tennessee statutory law after veterinarians had, made appropriate findings of neglect. Because the defendants complied with statutory procedural requirements before seizing the animals and their compliance is undisputed, all defendants are entitled to summary judgment with respect to all claims, both state and federal, with respect to all of the animals, whether domestic, exotic, native wildlife, or livestock.

Accordingly, defendants Humane Society of Bedford County, Tennessee, Inc., Larry Wayne Robins, Sr., and John and Jane Doe are entitled to summary judgment, and their motion for summary judgment [Court File #441] will be granted.

Plaintiffs argue that defendant Kay Petty, the Director of the Humane Society, is not a governmental employee and therefore not entitled to qualified immunity under either state or federal law. Assuming that plaintiffs are correct in this assertion, Ms. Petty is nevertheless entitled to summary judgment on all claims against her. Quite simply, she complied with all procedural and statutory requirements before ordering the seizure of the animals. Therefore, plaintiffs' motion to alter or amend [Court File #44] will be denied.

These rulings leave no remaining claims with respect to any of the defendants, and this action will therefore be dismissed.

Order accordingly.

/s/ J.H. Jarvis
James H. Jarvis,
UNITED STATES
DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
AT WINCHESTER

NORBERT ROCH, REGINA ROCH, ELAINE ROCH, and LORRAINE ROCH, Plaintiffs	)	
v.	)	No. 4:02-cv-30
HUMANE SOCIETY OF BEDFORD COUNTY, TENNESSEE, INC., *et al.*, Defendants	)	

ORDER

(Filed Jan. 13, 2004)

For the reasons set forth in the Memorandum Opinion this day passed to the Clerk for filing, it is hereby ORDERED that defendants' motion [Court File #41] is GRANTED, plaintiffs' motion [Court File #44] is DENIED, and this action is DISMISSED.

ENTER:

/s/ J.H. Jarvis
James H. Jarvis,
UNITED STATES
DISTRICT JUDGE

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No. 05-404

In The
Supreme Court of the United States

NORBERT ROCH, REGINA ROCH,
ELAINE ROCH & LORRAINE ROCH,

Petitioners,

v.

HUMANE SOCIETY OF BEDFORD COUNTY, TENNESSEE, INC.; KAY PETTY, INDIVIDUALLY, AND IN HER CAPACITY AS PRESIDENT OF THE BEDFORD COUNTY HUMANE SOCIETY, INC.; BEDFORD COUNTY, TN; LARRY ROBINS, SR.; JOHN DOE; JANE DOE,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1) Whether Petitioners' claims were fully and fairly adjudicated in the state courts of Tennessee.

2) Whether the *Rooker-Feldman* doctrine mandates dismissal of Petitioners' case for lack of subject matter jurisdiction.

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STATEMENT OF THE CASE

This action arose out of Petitioners' possession of several hundred domestic and exotic animals on their property in Bedford County, Tennessee. In May 2001, the State of Tennessee filed criminal charges against Petitioners, alleging more than 250 violations of Tennessee law including animal cruelty, theft of property, disorderly conduct, resisting arrest and illegal possession of native wildlife. Petitioners each entered into a "Memorandum of Understanding" pursuant to Tenn. Code Ann. § 40-15-105, promising, *inter alia*, "not to obtain any more animals in the State of Tennessee" and to "forfeit any interest they may have in all animals previously seized by the Bedford County Humane Society."

Contemporaneous with the criminal proceedings, the State of Tennessee and the Shelbyville-Bedford County Humane Association ("SBCHA") filed a joint civil petition against Petitioners requesting a hearing to establish a plan of care for the animals. The court issued an *ex parte* order granting authority to the SBHCA to "enter the Roch premises and to inspect the condition of the animals impounded there and to take any action reasonably necessary to interfere [and] to prevent the perpetration of any act of cruelty on any animal." SBCHA volunteers and members of the Bedford County Sheriff's Department removed over 100 dogs from Petitioner's property pursuant to this Order.

On July 26, 2001, the state court held a hearing to determine the fate of 51 dogs that remained on Petitioners' property. Witnesses, including a licensed veterinarian, testified about the deplorable conditions on Petitioners' property and the risks to human health posed by decaying

animal carcasses and fecal waste. Petitioners were represented by counsel, and their attorney cross-examined all of the State's and the SBCHA's witnesses at the July 26, 2001 hearing. Following the hearing, the parties agreed that Petitioners would be allowed to keep the remaining dogs so long as they provided proper care for them.

The parties returned to state court in September, 2001. The State and SBCHA presented evidence to demonstrate that Petitioners failed to properly care for the remaining dogs. The state court issued a written opinion on September 28, 2001 holding that Petitioners had committed acts of animal cruelty on the dogs and granting the SBCHA the authority to remove and dispose of the dogs that remained on Petitioners' farm. The state court entered another order on October 19, 2001 setting the date for the SBCHA to remove the dogs. Petitioners appealed these orders to the Court of Appeals of Tennessee and the appeal was denied.

Petitioners filed this lawsuit in federal court on May 3, 2002 pursuant to 42 U.S.C. § 1983 alleging that the removal of the animals violated their constitutional protections against unreasonable seizure and unjust taking of property, as well as pendant claims under state law. Respondent Petty moved for summary judgment claiming that Petitioners' suit was barred by the doctrine of *res judicata* and that the state law claims against Respondent Petty were barred by state governmental immunity statutes. In support of her motion, Respondent Petty attached a certified copy of the orders from state court to demonstrate that the issues had been fully and fairly adjudicated. The District Court found Petitioners' claims related to seizure of their dogs were precluded by the doctrine of *res judicata*, or, in the alternative, were

without merit. The District Court subsequently found that Petitioners' remaining claims related to seizure of 39 heads of livestock were also without merit.

Petitioners appealed the grant of summary judgment to the Sixth Circuit Court of Appeals. The Sixth Circuit agreed that claims related to seizure of Petitioners' livestock were without merit. However, the Sixth Circuit dismissed Petitioners' remaining claims for lack of jurisdiction under the *Rooker-Feldman* doctrine rather than *res judicata* preclusion theories because Petitioners attempted to collaterally attack a state court judgment in federal court.

REASONS FOR DENYING THE WRIT

I. The Court of Appeals Correctly Determined That Petitioners' Issues Were Fully and Fairly Adjudicated in State Court Before the Federal Lawsuit Was Filed.

The Petition misstates the appropriate Question Presented For Review because it expresses the issue as involving application of *Rooker-Feldman* "before entry of judgment in state court." *See* Cert.App.i. Contrary to the impression the Petition leaves, the Court of Appeals applied the *Rooker-Feldman* doctrine to issues that were fully and fairly adjudicated in state court before the federal action began. This Court should deny the Writ because the Petition rests on an improper assumption.

The finality of the state court decision was necessarily an element in the District Court's grant of summary judgment on *res judicata* grounds and was explicitly included in the Court of Appeals' rationale when it

affirmed the dismissal under *Rooker-Feldman*. The state court determined the legality of the seizure of Petitioners' animals by orders entered September 28 and October 19, 2001. Respondent Petty submitted a certified copy of those orders to the District Court and those orders were included in the record considered by the Court of Appeals. Petitioners appealed those orders, but the Tennessee Court of Appeals denied the appeal. Petitioners filed the instant action on May 3, 2003. Any opportunity for further consideration or appellate review on the state level had extinguished well before Petitioners filed this action in federal court.

Petitioners have not explained why the prior state action lacks finality; rather, Petitioners express the lack of finality of the state court judgment as if it were a given fact. The opposite is true: both the District Court and the Court of Appeals found the state court judgment to be indisputably final.

The District Court's discussion of this issue is illustrative:

> Plaintiffs' principal argument with respect to *res judicata* is that no "final" order has been entered in this case to which *res judicata* principles attach. I disagree. The court finds that Judge Russell's memorandum opinion entered on October 1, 2001, by the Circuit Court Clerk of Bedford County was a final, appealable order. . . . the relief ordered was final and either no appeal was taken or the appeal was denied.

The Court of Appeals stated that "[t]he district court correctly found that the issues underlying the Rochs' claims were already litigated in state court." *See* Cert.App. 7.

II. The Court of Appeals' Application of the *Rooker-Feldman* Doctrine Is Correct and Consistent With *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 125 S.Ct. 1517 (2005).

In *Exxon Mobil Corp. v. Saudi Basic Indus.*, 125 S.Ct. 1517, 1526 (2005), this Court limited application of the *Rooker-Feldman* doctrine to cases such as those from which the doctrine draws its name. Both *Rooker v. Fidelity Trust Co.*, 44 S.Ct. 149 (1923), and *District of Columbia Court of Appeals v. Feldman*, 103 S.Ct. 1303 (1983), involved "the losing party in state court fil[ing] suit in federal court after the sate proceedings ended, complaining of an injury caused by the state court judgment." *Exxon*, 125 S.Ct. at 1526. In *Exxon*, the state court defendant filed suit in federal court only two weeks after the state court action was initiated. *Id.* at 1525. The federal lawsuit did not seek to overturn a state court judgment. *Id.* at 1526. Rather, the federal court plaintiff in *Exxon* prevailed in state court while the federal suit was pending and had filed the federal suit to protect other rights. *Id.* at 1527. This Court reversed the Third Circuit Court of Appeals' application of *Rooker-Feldman* in *Exxon* because *Rooker-Feldman* only applies to deprive a District Court of jurisdiction when the state action is final before the federal action begins, rendering the federal lawsuit impermissibly appellate in nature. *Id.* at 1526-28.

This case is analogous to *Rooker* and *Feldman* but distinguishable from *Exxon*. The most crucial distinction lies in the status of the state court case. In *Rooker* and *Feldman*, as in this Case, the state court judgment was final before the federal action was filed; whereas, the state court action had only just begun when the federal suit was filed in *Exxon*. In this case and in *Rooker* and *Feldman*,

the state court loser complained of constitutional violations as a result of the state court judgment and sought relief therefrom in federal court; whereas the *Exxon* claimant prevailed in state court and filed the federal action only to safeguard itself from possible procedural differences between the state and federal systems. This Court declined to uphold the Third Circuit's application of *Rooker-Feldman* under the facts in *Exxon*, but reiterated that the doctrine would preclude "a United States district court from exercising subject matter jurisdiction" under circumstances such as those in *Rooker* and *Feldman*. *Id.* at 1526. This case falls within the narrow set of circumstances found in *Rooker* and *Feldman* that deprive a District Court of subject matter jurisdiction and is factually distinct from *Exxon*. Accordingly, this Court should deny the writ because the Court of Appeals' application of *Rooker-Feldman* was correct and consistent with this Court's holding in *Exxon*.

III. Petitioners Have Not Articulated a Compelling Reason to Justify Discretionary Review by This Court.

"Review on a writ of certiorari is not a matter of right, but of judicial discretion." Sup. Ct. R. 10. "A petition for a writ of certiorari will be granted only for compelling reasons." *Id.* Petitioners have not presented a compelling reason for this Court to exercise its discretionary jurisdiction over Petitioners' appeal. Petitioners argue that the result below "will limit the federal court's [sic] jurisdiction to hear cases involving constitutional rights and deprivation of those rights pursuant to 42 U.S.C. § 1983." However, this Court has already addressed *Rooker-Feldman*'s impact on the subject matter jurisdiction of United States

District Courts in the *Exxon* case decided earlier this year. 125 S.Ct. 1517. *Exxon* sufficiently addresses the concerns that Petitioners attempt to articulate, and leaves no compelling reason for this Court to review this case on certiorari.

CONCLUSION

For the foregoing reasons, the Petition should be denied.

Respectfully submitted,

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